

PART I SECTION H

SPECIAL CONTRACT REQUIREMENTS

Part I Section H
Special Contract Requirements**Table of Contents**

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Part I Section H

Special Contract Requirements

H.1 Definitions

"The United States Department of Energy (DOE)" means the same as "United States (U.S.)," "Government," and "Idaho Operations Office."

H.2 Defining The Federal/Contractor Relationship

The Government is committed to improving the effectiveness and efficiency of the INL missions. This clause sets forth the Government's intent to achieve that commitment. Additional clauses in this section set forth specific contract requirements and authorities to permit the Contractor to exercise flexibility in managing INL operations.

The Government shall provide program and performance direction regarding what is expected in each program area. The Contractor shall determine how the program requirements are to be executed and shall be accountable for performance in accordance with the terms and conditions of this contract. The Contractor shall use the flexibilities granted under this contract to exercise its expertise and ingenuity in determining the optimal approach to accomplish assigned work in the most effective and efficient manner. As detailed in Section G, the Government shall issue program and performance direction only through a warranted Contracting Officer or a designated Contracting Officer's Representative (COR). All other Federal staff and oversight components are specifically precluded from tasking contractor personnel.

H.3 Reserved

H.4 Contractor Assurance System

- (a) The Contractor shall develop a Contractor Assurance System that is approved and monitored by the Contractor's Board of Directors or similar body established to provide oversight of the business entity created pursuant to Section H.40 entitled, "Business Unit." This Contractor Assurance System, at a minimum, shall have the following key attributes:
 - (1) A comprehensive description of the Contractor Assurance System with risks, key activities and accountabilities clearly identified.
 - (2) A method for validating processes. Third party audits, peer reviews, independent assessments and external certification (such as VPP and ISO 9001 or ISO 14001) may be used in validating the Contractor's assurance system.

- (3) A process for notifying the Contracting Officer of significant assurance system changes.
 - (4) Rigorous, risk-based, credible self-assessments, feedback and improvement activities, including utilization of nationally recognized experts, and other independent reviews to assess and improve its work process and to carry out independent risk and vulnerability studies.
 - (5) Identification and correction of negative performance/compliance trends before they become significant issues.
 - (6) Integration of the assurance system with other management systems including Integrated Safety Management.
 - (7) A process for defining metrics and targets to assess performance, including benchmarking of key functional areas with other DOE contractors, industry and research institutions. Assure development of metrics and targets that result in efficient and cost effective performance.
 - (8) Continuous feedback and performance improvement.
 - (9) An implementation plan for the Contractor Assurance System.
 - (10) A process for timely and appropriate communication to the Contracting Officer, including electronic access, of assurance related information.
- (b) The Government may revise its level of oversight of this contract only when the Contracting Officer determines that the Contractor Assurance System is operating effectively.

H.5 Application of DOE Directives and Alternatives

- (a) **Performance** The Contractor shall perform the work of this contract in accordance with each of the DOE directives appended to this contract as Section J, Attachment G until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.
- (b) **Laws and Regulations Excepted** This clause supplements the requirements in Section I entitled, “Laws, Regulations, And DOE Directives,”(DEAR 970.5204-2) and DOE M 251.1-1A for purposes of addressing alternatives to DOE directives. The process described in this clause does not affect the application of applicable laws and regulations.
- (c) **Deviation Processes in Existing Orders** This clause does not preclude the use of deviation processes provided for in existing DOE directives.

- (d) **Proposal of Alternative** The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed directive by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized in performance under the contract, and a schedule for implementation of the alternate. The Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the proposal.
- (e) **Action of the Contracting Officer** The Contracting Officer shall within sixty (60) calendar days:
- (1) Deny application of the proposed alternative;
 - (2) Approve the proposed alternative, with conditions or revisions;
 - (3) Approve the proposed alternative; or
 - (4) Provide a date by which a decision shall be made (not to exceed an additional sixty (60) calendar days).
- (f) **Implementation and Evaluation of Performance** Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the directive. This statement shall describe any changes to the schedule for implementation. The Contractor shall then implement the revised alternative. The Government shall evaluate performance of the approved alternative from the Contractor's scheduled date for implementation.
- (g) **Application of Additional or Modified Directives** During performance of the contract, the Contracting Officer may notify the Contractor that s/he intends to unilaterally add directives not then listed in Section J, Attachment G entitled "List of Applicable DOE Directives (List B)" or make modifications to listed directives. Within thirty (30) calendar days of receipt of that notice, the Contractor may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted within the thirty (30) calendar-day period, or, if made, is denied by the

Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the directive or modification to Section J, Attachment G. The Contractor and the Contracting Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the directive or modification.

- (h) **Deficiency and Remedial Action** If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, at his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the directive.

H.6 Lobbying Restriction (Energy and Water Act 2004)

The Contractor agrees that none of the funds obligated on this contract shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.7 Lobbying Restriction (Interior Act 2004)

The Contractor agrees that none of the funds obligated on this contract shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.8 Technology Transfer Licensing Program

- (a) **Licensing Program** To assist in the commercialization and utilization of inventions and technologies developed under the contract, the Contractor shall establish a licensing program whereby waived subject inventions and copyrighted software are moved in an expeditious manner into the commercial marketplace by means of appropriate licensing agreements. This licensing program will be administered consistently with the Contractor's contractually obligated technology transfer efforts and the other provisions of this contract.

The Contractor shall utilize the Laboratory share of royalty revenues and other fees obtained pursuant to activities under this clause at the Laboratory consistent with paragraph (h) of the Section I clause entitled, "Technology Transfer

Mission.” The Contractor agrees to carry out licensing activities in accordance with the export control laws and regulations of the United States.

- (b) **Royalty Sharing with Inventors** The Contractor shall establish, subject to the approval of the Contracting Officer, a policy for the sharing of royalties with inventors.

Where the Contractor has a corporate policy for incentive awards including sharing royalties with inventors, or the Contractor is a subsidiary or affiliate and its parent corporation has an incentive and royalty sharing policy, the corporate sharing policy may be approved by the Contracting Officer for use at the INL.

Whenever any annual invention awards or annual royalty payments to an inventor exceeds ten percent (10%) of the inventor's annual base salary, the Contractor shall:

- (1) Identify the inventor to the Contracting Officer.
- (2) Provide an accounting of time spent by the inventor on private consultations, Work for Others projects and DOE mission work.
- (3) Provide a review of DOE mission work and ensure no conflict or apparent conflict of interest exists with respect to the inventor.

H.9 Third Party Rights

This contract is not enforceable by, or for the benefit of, and shall create no obligation to, any person or entity other than the Parties.

H.10 Option to Take Title to Facilities

If the Contractor and the Government agree that the Contractor retains title to a facility it builds during contract performance, the Government reserves an option to take title to the facility (including fixtures and other equipment used in the facility) if the Contractor does not complete contract performance for any reason. If this option is exercised, the Government shall, consistent with this contract and any supplemental agreements describing how facility construction costs will be shared, negotiate a fair settlement on reimbursement of unrecovered facility capital expenses.

H.11 Public Communications

- (a) The Contractor shall develop a communications strategy in accordance with Section I clause entitled, “Public Affairs” (DEAR 952.204-75) that supports two goals:

- (1) Communicating with stakeholders how the INL's work supports the government's missions in energy, national security, science and the environment; and
 - (2) Building informed consent that will allow the INL to move forward with new, but potentially controversial projects that contribute to these missions. This responsibility shall be carried out in such a manner that the public has a clear understanding of activities at the INL.
- (b) The INL Contractor shall coordinate as needed with the ICP Contractor communications program to ensure consistent information is presented to the public.
 - (c)

H.12 Privacy Act Systems of Records (SOR)

The Contractor shall design, develop, and operate the following systems of records on individuals to accomplish an agency function pursuant to the Section I clause entitled, "Privacy Act" (FAR 52.224-2).

<u>DOE System Number</u>	<u>Title</u>
DOE-05	Personnel Records of Former Contractor Employees (This SOR shall include the records of all former employees who previously worked for any predecessor contractors at the INEEL)
DOE-10	Worker Advocacy Records
DOE-11	Emergency Operations Notifications Call List
DOE-15	Intelligence Related Access Authorization
DOE-31	Firearms Qualification Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-43	Personnel Security Clearance Files
DOE-48	Security Education and/or Infraction Reports
DOE-51	Employee and Visitor Access Control Records

DOE-52	Access Control Records of International Visits, Assignments and Employment
DOE-75	Call Detail Records
DOE-77	Physical Fitness Test Records
DOE-81	Counterintelligence Administrative and Analytical Records and Reports
DOE-84	Counterintelligence Investigative Records
DOE-88	Epidemiologic and Other Health Studies, Surveys and Surveillances

This list may be revised from time to time by written direction from the Contracting Officer. Direction from the Contracting Officer is effective immediately and satisfies the listing requirement contained in paragraph (a)(1) of the Section I clause entitled, "Privacy Act" (FAR 52.224-2).

H.13 Stop Work and Shutdown Authority

Section F clause entitled, "Stop Work Order" Alternate 1 (FAR 52.242-15), allows only the Contracting Officer to stop work or shutdown facilities for reasons other than harm or imminent danger to the environment or health and safety of employees and the public.

Due to the immediate need to stop work where the Contractor's acts or failures to act cause substantial harm or present an imminent danger to the environment or health and safety of employees or the public, any DOE employee may exercise the stop work authority contemplated in Section I clause entitled, "Integration of Environment, Safety, and Health Into Work Planning and Execution" (DEAR 970.5223-1).

H.14 Work Force Transition and Human Resources Management

- (a) **Employee Management Program** The Government intends that the Contractor has the flexibility to organize its work force as it believes necessary to effectively and efficiently perform the scope of work covered in this contract. The Government shall, consistent with budget realities, support the Contractor's long-term efforts to establish and administer wage and employee benefit programs that attract and motivate the highly skilled work force needed to accomplish the work. During transition, the Contractor shall establish the management structures necessary to conduct employee relations and develop a comprehensive plan describing the Contractor's Employee Management Program. This plan must demonstrate-how the Contractor will -

- (1) Ensure realignment of INL resources while ensuring an orderly transition from Bechtel BWXT Idaho, LLC (BBWI) and the University of Chicago (collectively referred to as the "incumbent contractors");
- (2) Be fair to employees while maintaining a productive and flexible work force;
- (3) Promote the stability of collective bargaining relationships;
- (4) Minimize the cost of transition and its impact on DOE programs; and
- (5) Assure access to a sufficient work force with the skills necessary to meet contract requirements and specifically addressing --
 - (i) The Contractor's approach for assessing the skills of incumbent contractor employees and filling vacancies with employees who were on the payroll of incumbent contractors.
 - (ii) The Contractor's approach for establishing appropriate incentives that encourage highly skilled, motivated, and experienced workers to accept an employment offer and motivates these workers to remain at the INL on a long-term basis.

This plan shall be incorporated into the contract in Section J, Attachment L entitled, "Employee Management Plan."

(b) **Employee Transition**

Collectively, the INL Contractor (except as set forth in (2)(i) below) and the ICP Contractor are required to offer employment to all existing employees in good standing on the regular payroll of the incumbent contractors at the time of contract takeover. For the INL Contractor, this is estimated to be 3055 employees (includes approximately 610 ANL-W incumbent employees and approximately 2445 BBWI incumbent employees). For purposes of the remainder of this section entitled "Employee Transition", non-management employees means employees below the first level supervisor, and management employees means employees at the first level supervisor and above.

- (1) **Non-Management Employees.** Except where required by collective bargaining agreements, it is not mandatory that hired employees remain in their current job positions or classifications. Any changes in job positions or classifications shall be accompanied by alteration in compensation commensurate with any change in position and consistent with section (c)(1) "Pay and Benefits", of this clause.

- (2) **Management Employees.** It is the Contractor's prerogative to establish its own management structure and team.
- (i) Continued employment of management employees in the positions listed in Section J, Attachment Q entitled, "Discretionary Incumbent Management Positions" is at the discretion of the Contractor.
 - (ii) It is not mandatory that hired management employees remain in their current job positions or classifications. Any changes in job positions or classifications shall be accompanied by alteration in compensation commensurate with any change in position and consistent with section (c) (1) 'Pay and Benefits', of this clause.
- (3) These employee transition provisions do not apply to subcontractor employees.

(c) **Pay and Benefits**

- (1) **Base Salary/Pay Rates** For employees of incumbent contractors hired by the Contractor under subparagraph (b) above -
- (i) The Contractor shall pay them for the first year of employment, base salary/pay rates that are at least equivalent to the base salary/pay rates they are being paid at the time the Contractor offers them employment if the position for which they are hired entails duties and responsibilities substantially equivalent to their last positions with the incumbent contractors. For represented employees, pay rates will be determined through the collective bargaining process.
 - (ii) If the base salary/pay rates that employees were paid in their last position with the incumbent contractors fall above the maximum rate of the new base salary/pay rates, in such circumstances, they shall continue to receive for the first year of employment the salary/pay rate paid by the incumbent contractors, and for the first year shall receive no base salary/pay adjustments unless the salary/pay rate structure the Contractor implements increases to exceed their base salary/pay rates. They shall then be eligible for increases consistent with the Contractor's policies. For represented employees, any changes will be determined through the collective bargaining process.
 - (iii) If the base salary/pay rates these employees were paid in their last position with the incumbent contractors fall below the minimum

rate of the new base salary/pay rates in such circumstances, they shall have their salaries/pay rate increased to reflect the new rates.

- (2) **Service Credit Dates:** Employees who change employment to BEA from BBWI or CWI, will receive credit for their prior service, as recognized by the losing employer, for purposes of determining leave balances, severance payments and service awards.

(3) **Pensions and Other Employee Benefits**

- (i) The Contractor shall sponsor and manage pension and other employee benefit plans in accordance with law. The Contractor shall have responsibility for funding, and collecting funding from co-sponsors, as provided in Section H.14(c)(3)(iv) below, administering, and maintaining the qualified status of all pension and investment plans. The Contractor's efforts in this area include resolution of pension and other employee benefits issues associated with transitioning a work force employed by two incumbent contractors administering separate and distinct benefits plans. The Contractor is encouraged to explore ways to modernize and consolidate pension and other benefits plans. Resolution of these issues must be done in a manner that -
 - a. Is fair to hired incumbent contractor employees participating in plans maintained by the incumbent contractors;
 - b. Is cost-effective;
 - c. Attracts outstanding people to work at the INL; and
 - d. Provides the best fit for the long-term vision of the INL.
- (ii) The Contractor shall, for the benefit of employees hired by the Contractor during transition who were participants in defined contribution plan(s), either -
 - a. Establish defined contribution pension plan(s) that accept existing employee account assets and obligations from incumbent contractor defined contribution plan(s); or
 - b. Become a sponsor or co-sponsor of those plan(s).
- (iii) The Contractor shall become the main sponsor of existing site defined benefit plan(s) for employees hired by the Contractor during transition who were participants in the plan(s), with responsibility for management and administration of the plan(s).

These plan(s) will be co-sponsored by the ICP Contractor. For a period of five years after contract takeover, the Contractor shall allow such employees to accrue credit under the plan(s) for service under this contract or the ICP contract. The plan(s) shall accept rollovers of the interests of incumbent contractor employee participants who initially become employees of the ICP Contractor and who thereafter become employees of the Contractor without treating their employment with the ICP Contractor as a break in service. In a timely manner prior to the end of this five-year period, the Contractor shall provide a written recommendation for Contracting Officer approval for transitioning the covered employees to new plan(s) established under this contract or continuing the plan(s) until completion of the contract term.

- (iv) From February 1, 2005, through September 30, 2007, all costs (including administration) associated with the site Defined Benefit Pension Plan will be split so that the INL share is 42%, the ICP share is 57%, and the AMWTP share is 1%. As of October 1, 2007, all costs (including administration) associated with the site Defined Benefit Pension Plan will be split so that the INL share is 47%, the ICP share is 52%, and the AMWTP share is 1%.

From February 1, 2005, through September 30, 2007, all costs (including administration) associated with the Medical and Welfare Benefits program for retirees as of January 31, 2005, will be split so that the INL share is 42%, and the ICP share is 58%. As of October 1, 2007, all costs (including administration) associated with the Medical and Welfare Benefits program for retirees as of January 31, 2005, will be split so that the INL share is 47%, and the ICP share is 53%.

From February 1, 2005, through January 31, 2007, employee benefits costs included within the amounts reimbursed or funded by the ICP contract for mandatory services (Section J, Attachment F-6.1) count towards ICP's share of the costs.

- (v) The Contractor shall maintain and administer pension plan(s) maintained and administered by BBWI for employees who retired from employment with site contractors prior to contract takeover.
- (vi) The Contractor shall maintain and administer the post retirement medical benefit plan maintained and administered by BBWI for employees who have retired from employment with site contractors prior to contract takeover.

- (vii) Subject to DOE approval, the Contractor shall establish pension and investment plan(s) for new employees hired during the term of this contract. These plans should encourage the voluntary transfer of assets of hired incumbent contractor employees where consistent with legal requirements and with the principles identified above.
- (viii) During this contract, the Contractor may change any of the pension and welfare benefit plans, including any of the retirement medical benefits, administered by the incumbent contractors subject to legal requirements and to the requirements and conditions set forth in this contract. The Contractor shall obtain the written approval of the Contracting Officer before it initially implements any pension or welfare benefit plans and before it makes effective any changes in such plans or in any underlying trust documents. Changes to any pension and welfare benefit plans, including any of the retirement medical benefits, shall be consistent with applicable law, terms of the respective plans with respect to the procedures for amending such plans, and the terms of this contract.
- (ix) Because the Contractor is responsible for administering and maintaining the qualified status of all pension and investment plans, the Contractor shall, as directed by the Contracting Officer, submit to the Contracting Officer annual actuarial and employer certifications as the sponsoring employer and participating employer in the plans demonstrating full compliance with Internal Revenue Code and Employee Retirement Income Security Act (ERISA) requirements including, but not limited to, any applicable non-discrimination testing.

(4) **Post-Contract Responsibilities for Pension and Benefit Plans**

If this contract expires or terminates without a follow-on contract, notwithstanding any other obligations and requirements concerning expiration or termination under any other clause of this contract, including but not limited to FAR 52.249-6, "Termination (Cost Reimbursement) (Sept 1996)," the following actions shall occur:

- (i) The Contractor shall continue as plan sponsor of all existing and follow-on pension and welfare benefit plans covering site personnel with responsibility for management and administration of the plans, as directed by DOE, at DOE's sole discretion.
- (ii) In accordance with DOE-approved Contractor welfare benefit plans, the Contractor shall provide benefit continuation on a funding basis acceptable to DOE.

- (iii) During the final 12 months of this contract, the Contracting Officer shall provide written direction regarding post-contract responsibilities for pension and welfare benefit plans.
- (iv) Notwithstanding termination for convenience or default, the contract may be extended as appropriate and necessary for purposes deemed necessary by the Contracting Officer, including but not limited to obligating funds to pay the Contractor for costs incurred pursuant to contributions to the Contractor's existing and, if applicable, follow-on, site pension and welfare benefit plans. Such costs shall continue to be allowable in accordance with applicable laws and regulations.

(5) **Compensation Paid to Senior Executives**

Allowable costs for compensation paid to senior executives is subject to the limitations published in 65 Federal Register 30640 (May 12, 2000) and any updates published in the Federal Register or in written direction from the Contracting Officer. While this clause establishes the level of compensation that is an allowable cost under this contract, it should not be construed as a limit on the level of compensation the Contractor may pay its senior executives. The Contractor is encouraged to seek out the most highly qualified candidates for senior level executives.

(d) **Labor Relations**

- (1) The Contractor shall respect the right of employees to self-organize and to form, join, or assist labor organizations, to bargain collectively through their chosen labor representatives, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities.
- (2) During the collective bargaining process, the Contractor shall obtain the approval of the Contracting Officer before submitting or agreeing to any collective bargaining proposal which can be calculated to affect allowable costs under this contract or which could involve other items of special interest to the Government.
- (3) Consistent with applicable labor law and regulations, the Contractor shall recognize and bargain in good faith with the Paper, Allied-Industrial, Chemical and Energy Workers (PACE) as the collective-bargaining representative of employees performing work that has historically and traditionally has been performed by PACE members and is covered in the scopes of these contracts, and negotiate collective bargaining agreements. During the collective bargaining process, the Contractor shall obtain the

approval of the Contracting Officer before proposing or agreeing to changes in any pension or retirement income plans or to any other welfare benefit plans.

H.15 Severance Pay

- (a) Severance pay benefits are not payable to an employee under this contract if the employee:
 - (1) Voluntarily separates from employment,
 - (2) Is offered employment with a successor/replacement contractor,
 - (3) Is offered employment with a parent or affiliated company,
 - (4) Resigns,
 - (5) Is discharged for cause, or
 - (6) Is a key person identified in Section J, Attachment D entitled, "List of Key Personnel."
- (b) Service Credit for purposes of determining severance pay does not include any period of prior service at a DOE facility for which severance pay was previously paid.

H.16 Labor Standards

The Government shall determine the appropriate labor standards that apply to work activities in accordance with the Davis-Bacon Act or other applicable labor law. When requested by the Government, the Contractor shall timely provide information necessary for the Government to make the determination. Once a determination is made, the Contractor is responsible for complying with the determination and incorporating appropriate labor standards requirements into subcontracts.

H.17 Strikes or Labor Stoppages

The Contractor shall promptly notify the Government of any planned or actual strike or work stoppage involving its employees or employees of a subcontractor.

H.18 Advance Understandings on Labor Costs

- (a) During transition, the parties shall negotiate an advance understanding on the costs of wages and other employee benefit programs. This advance understanding shall be incorporated into Section J, Attachment L entitled, "Employee Management Program." Changes to the advance understanding shall receive the written approval of the Contracting Officer.
- (b) Examples of costs that shall be addressed in the advance understanding include salaries and wages; bonuses and incentive compensation; fringe benefits; premium pay; overtime; paid time off; travel; subsistence and relocation to the

INL; training; workers compensation and other employee insurance; and other employee benefits (such as employee and retiree medical and short and long-term disability).

- (c) Contract deliverables necessary for administration of requirements imposed in the advance understanding shall be described in Section J, Attachment I entitled, "Contract Data Requirements List (CDRL)."

H.19 Displaced Employee Hiring Preference

- (a) Consistent with Department of Energy guidance as supplemented by the Idaho Operations Office Workforce Restructuring Plan, the Contractor shall provide to the extent practicable and to the extent the Contractor supplements its existing work force to perform the work, a preference in hiring to any eligible employee for work to be performed under this contract.
- (b) Eligible employee means a former or current employee of a contractor or subcontractor (1) who was employed at a Department of Energy Defense Nuclear Facility ("Facility") on or before September 27, 1991, as defined in the interim Planning Guidance for Contractor Work Force Restructuring (DEC 1998) or other applicable Department of Energy guidance for contractor work force restructuring, ("Guidance"), (2) who worked full-time or regular part-time at a Facility from that date through the date of the restructuring notification, (3) whose employment at a Facility has been involuntarily terminated (other than for cause) or who has been notified that they are facing termination other than for cause, (4) who is qualified for a particular position or, with retraining, can become qualified within the time and cost limits set forth in the Guidance.
- (c) The Contractor shall assess the skills needed for the work to be performed under this contract and will provide to the DOE Job Opportunity Bulletin Board System (JOBBS) all information relevant to the qualifications for all of the positions for which it has vacancies.
- (d) To the extent practicable, the Contractor shall develop training programs designed to improve the qualifications of eligible employees to fill vacancies and shall take these training programs into account in assessing the qualifications of eligible employees.
- (e) This preference is in addition to other hiring preferences described in clause H.14 and in Section I clause entitled, "Displaced Employee Hiring Preference" (DEAR 952.226-74).
- (f) The Contractor shall include the requirements of this clause in subcontracts at any tier (except subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

H.20 Subcontract Labor Law Application

- (a) For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (b) For all subcontracts, the principal purpose of which is to furnish services through the use of service employees, in excess of \$2,500.00, and which are subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- (c) For Subcontracts relating to construction, refer to the clause in Section I entitled, "Government Facility Subcontract Approval."

H.21 Financial Management System

- (a) In addition to those clauses listed elsewhere in this contract, the Contractor shall operate and maintain a timely, useful and reliable financial management system that –
 - (1) Complies with laws, regulations and DOE directives/financial reporting requirements, including prescribed accounting formats.
 - (2) Conforms with the US Government Standard General Ledger (SGL), Generally Accepted Accounting Principles, Federal Financial Accounting Standards, and Cost Accounting Standards, except as modified by this contract.
 - (3) Integrates and reports the financial information for subcontractors.
 - (4) Plans, develops, monitors, and reports indirect costs by major work activity/service area as concurred by DOE. Provides financial analysis capabilities sufficient to model indirect cost rates for planning purposes (budget submissions) and execution year actual rates with minimal changes that impact program performance and fiscal effectiveness. (Impact statements shall be prepared for all proposed rate changes impacting the programs.)
 - (5) Allows for Idaho Operations Office read-only electronic access to accounting records and other pertinent systems and databases.
 - (6) Employs charging practices, policies, and procedures to collect and report forecasted and incurred cost. This proposed work breakdown structure, chart of accounts, charging practices and policies shall be approved by the Government before implementation. Changes to charging practices,

including cost accounting changes or any other change affecting historical records of projects require a modification of the contract.

- (7) Assures funding as provided in the Financial Plan is directly aligned to Task Plan activities within the approved baselines. (Funds will not be provided until the baselines are approved by the Idaho Operations Office).
- (8) Supports periodic requests, to provide detailed cost element information at the institutional level using standard definitions and applications.
- (b) These systems shall be compliant with the above standards. These systems include: general electronic data processing, budget & planning, purchasing, material, compensation, labor/payroll, indirect & other direct cost, billing and estimating. The Department of Energy, "Guiding Principles for Financial Management" shall be followed.

H.22 Internal Audit

This clause defines the approach the Contractor shall follow in meeting DEAR 970.5232-3 (h)(3)(i). The Contractor shall conduct an internal audit and examination program in accordance with the DOE Cooperative Audit Strategy as outlined in Department of Energy Acquisition Guide, Chapter 70, Part 5; Government Auditing Standards (yellow book, dated May, 2002) and Internal Auditing Standards (red book, dated January 2002) for records, operations, expenses, and transactions with respect to costs claimed to be allowable and allocable under this contract. The requirements of this clause may be satisfied by the Contractor Assurance System if the referenced standards are included or used in the validation process of that system.

H.23 Project Management System

The Contractor shall establish and maintain a Project Management System containing the policies, procedures, and tools that assure projects are completed on time and within budget. The Contractor shall apply this system to all work scope, using a graded approach based upon the nature, complexity, risk, size, and sensitivity of the work being performed. Attributes of this system shall include the following:

- (a) Definition and organization of the work scope.
- (b) Planning, scheduling and cost estimating.
- (c) Work authorization.
- (d) Performance assessment.
- (e) Change management.

- (f) Reporting.
- (g) Closeout.

H.24 Unallowability of Certain Costs

- (a) The following categories of costs are expressly unallowable.
 - (1) The cost of unauthorized or improper purchases made by its employees. Unauthorized or improper purchases are those that are not authorized by the clause in Section I entitled, “Contractor Purchasing System,” DEAR 970.5244-1 or the written direction of the Contracting Officer.
 - (2) Cost overruns where applicable change control or funds control processes at DOE control points established in accordance with the approved Project Management System clause H.23 were not followed or the Contractor did not obtain prior approval from the Contracting Officer.
- (b) Costs made unallowable under this clause shall be subject to the penalty described in Section I entitled, “Penalties For Unallowable Costs,” DEAR 970.5242-1 if the Contractor includes those costs in a submission for settlement of cost incurred.
- (c) FAR 31 shall determine the allowability of all other costs not addressed by this or other clauses.
- (d) This provision does not affect DOE’s rights under other provisions of the contract.

H.25 National Environmental Policy Act (NEPA)

The Contractor shall, early in the planning stage of any proposed activity that may trigger agency compliance with the National Environmental Policy Act (NEPA), inform DOE in writing of the potential environmental impacts, including any cumulative impacts from other proposed or ongoing actions. The proposed activity may not proceed until all NEPA requirements have been satisfied. DOE NEPA implementing procedures are published at 10 CFR Part 1021.

The Contractor shall implement all requirements, conditions and mitigation measures included in any applicable NEPA decision document, or categorical exclusion upon which a NEPA determination is based.

H.26 Withdrawal Of Work

- (a) The Contracting Officer reserves the right to have any of the work contemplated by Section C of the contract performed by either another contractor or to have the work performed by government employees.
- (b) Work may be withdrawn: (1) in order for the Government to conduct pilot programs; (2) if the contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interest of the Government.
- (c) If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity, if applicable, and to provide whatever support is required.

H.27 Corporate Home Office Expenses

No corporate home office expenses of the Contractor are allowable under this contract without the prior approval of the Contracting Officer.

H.28 Provisional Payment of Fee/Unearned Fee

- a. For the remainder of FY2005, the contractor is authorized to receive a monthly provisional fee payment, not to exceed a total of sixty-five percent (65%) of the \$11.1M fee pool established in Section B.2, Table B.1, in accordance with contract clause I.42, entitled "Payments and Advances".
- b. Except as allowed in the Section I clause entitled, "Total Available Fee: Base Fee Amount And Performance Fee Amount" (DEAR 970.5215-1), or as may be expressly stated within the text of a specific fee incentive, unearned fee cannot be carried over or used to fund other incentive arrangements of this contract

H.29 INEEL Site Stabilization Agreement and INEEL Site Construction Jurisdictional Procedural Agreement

The Contractor and subcontractor at all tiers shall become signatory to the INEEL Site Stabilization Agreement (SSA) and the INEEL Site Construction Jurisdictional Procedural Agreement (SJA). Copies of both agreements are contained in Section J, Attachment M entitled "Other Site Agreements." The SSA applies to Davis-Bacon Act construction performed within the geographic confines of the INL. The SJA applies to construction performed under contract with the Department of Energy Idaho Operations Office.

H.30 Employee Separations

Employee separations shall be consistent with approved Work Force Restructuring Plans for the INL and with DOE policy.

H.31 Reserved**H.32 Allocation of Responsibilities For Contractor Environmental Compliance Activities**

This clause allocates the responsibilities of the Department of Energy (DOE or the Government) and the Contractor, referred to collectively as “the Parties” for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term “environmental requirements” means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.

(a) Purpose and Scope.

The central purpose of this section is to implement the intent of the Parties that liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements be borne by the Party that caused the violation. This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fine or penalty upon either Party or both Parties without regard to the allocation of responsibility or liability under this contract. The allocation of liability for such fine or penalty is effective regardless of which Party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

(b) Enforcement Actions and Liability for Fines and Penalties.

Regardless of which Party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this clause and other clauses related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is the Contractor, the Contractor may seek reimbursement from the Government; and the Government shall determine whether the cost of the fine or penalty is reimbursable pursuant to the provisions of this contract and reimburse the Contractor when appropriate. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this contract if the Contractor was the named subject of the enforcement action, the Contractor shall either pay the fine or penalty or reimburse the Government (if it pays the fine or penalty).

(c) Signature of Permit Applications and other Regulatory Documents

- (1) Consistent with the Section I Clause entitled, "Laws, Regulations, And DOE Directives" (DEAR 970.5204-2), the Contractor shall obtain any licenses, permits, other approvals or authorizations for conducting activities on the INL. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations under this contract (hereinafter referred to collectively as "permits"). Except as specifically provided in the section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) shall be the sole applicant for any such permits required for its activities. The Contractor shall take all appropriate actions to obtain transfer of existing permits, and the Government shall use all reasonable means to facilitate transfer of existing permits. If the Government determines it is appropriate or if the Government is required by cognizant regulatory authority to sign permit applications, the Government may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting their responsibility under the permit unless the Government waives this requirement in writing.
- (2) The Contractor shall submit to the Government for review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents shall be provided to the Government, within a time frame identified by the Government, sufficient to allow substantive review and comment; and the Government shall perform such substantive review and comment within such time frame. When providing the Government with documents that are to be signed or co-signed by the Government, the Contractor shall accompany such document with a certification statement, signed by an appropriate company officer, attesting to the Government that the document has been prepared in accordance with all applicable requirements and the information is, to the best of their knowledge and belief, true, accurate, and complete.
- (3) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) shall be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.
- (d) The Contractor shall maintain clear lines of authority and accountability regarding compliance with environmental requirements. At a minimum, the Contractor shall have a single point of accountability at the site-area level, (e.g., Test Reactor

Area, Argonne National Laboratory-West, Central Facilities Area, Idaho Falls Facilities) for all activities at those facilities. The Contractor may further delegate responsibility for individual buildings, permitted facilities, or similar discrete units provided there is adherence to the principle of single point of accountability.

H.33 Preservation of Antiquities, Wildlife and Land Areas

- (a) Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. Government. Antiquities include Indian graves or campsites, relics, and artifacts. The Contractor shall control the movements of its personnel and subcontractor personnel to ensure that any existing antiquities discovered thereon are not be disturbed or destroyed by such personnel. The Contractor shall report the existence of any antiquities so discovered to the Contracting Officer or appropriate Contracting Officer Representative.
- (b) The Contractor shall exercise reasonable care in the preservation of native vegetation. If vegetation must be removed for programmatic, survey or construction purposes, the disturbed soils shall be re-vegetated or stabilized, as appropriate. In addition, the Contractor shall maintain an effective invasive plant species management program.
- (c) The Contractor shall exercise reasonable care in the protection of wildlife on the INL site.

H.34 Agreements and Commitments

- (a) Resources
 - (1) The resources proposed by the Contractor and accepted by the Government are incorporated into the contract in Section J, Attachment R entitled, "Agreements and Commitments." The Contractor shall provide these resources in the amount, manner, and schedule as specified in the referenced attachment. If the Contractor fails to provide any or all of these resources or to make progress toward providing these resources, the Government may exercise any of its rights and remedies under the contract, including those contained in the provision of the Section I clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts, Alternative II."
 - (2) The Contractor may propose additional resources for incorporation into the INL at any time during contract performance. Each new resource commitment shall be submitted on a Resource Commitment Form (in Section J, Attachment R) and approved by an authorized officer attesting to the Contractor's commitment of the resource to work under the contract. Any additional resources accepted by the Government will be incorporated into the contract by modification of the contract.

- (3) Any costs incurred by the Contractor in providing any of these resources are expressly unallowable under the contract.
- (b) The following are also incorporated into the contract, Section J, Attachment R entitled, "Agreements and Commitments."
 - (1) The Contractor's proposed organization structure including position title and brief description of each position down to the fifth supervisory level, if applicable. The names of key personnel shall be indicated on the organization structure. This shall remain part of the contract until September 30, 2006. Any changes prior to September 30, 2006, must be approved in advance by the Contracting Officer.
 - (2) If accepted by the Government, the Contractor's plan for the Center for Advanced Energy Studies in Idaho Falls, Idaho.

H.35 Small Business Subcontracting Plan

The Small Business Subcontracting Plan submitted and approved by the Contracting Officer at the time of contract award is incorporated into this contract as Section J, Attachment J. Required annual plans and any revisions to plans shall be approved by the Contracting Officer and incorporated into the contract by a separate contract modification. Plans shall provide consideration for local and Idaho businesses.

H.36 Legal Management Plan

- (a) The Contractor shall submit a Legal Management Plan in accordance with 10 CFR Part 719, and include the items set forth in 10 CFR 719.10 to the Contracting Officer for approval within sixty (60) days of contract award date.
- (b) The Plan shall describe the Contractor's practices for managing legal costs and matters for which it procures the services of retained legal counsel. Once approved by the Contracting Officer, the Plan, as well as applicable regulations and contract provisions forms the basis for approvals by the Contracting Officer to reimburse litigation and other legal expenses. The Plan may be revised from time to time to conform to legal management rules or policies established by DOE.

H.37 Responsibility for Existing Contractual and Other Agreements

The Contractor shall accept transfer of and assume responsibility and accountability for assignment of existing commercial and regulatory obligations of incumbent contractors.

H.38 Business Cooperation

The Government's objective is to better integrate various program activities as they are implemented through major contracts. Accordingly, the Contractor acknowledges the importance of fostering a working environment where scientific, technical, and business innovation and lessons learned are shared among other DOE sites operated by the Contractor or its parents and affiliates, and except where proprietary information is involved, among other sites in the DOE complex. The Contractor further recognizes that the exchange of ideas and systems solutions among scientists, engineers, and administrators at and among the sites and with colleagues of its parents and affiliates, is vital to the success of the scientific, engineering, and administrative work performed. Finally, the Contractor recognizes its role in ensuring that the overall costs of operating DOE site management contracts are minimized by reducing duplication of activities among the DOE sites, sharing resources and applications of business solutions, and resolving common problems in a collaborative manner. Accordingly, the Contractor shall work collaboratively with DOE and other DOE contractors to achieve these objectives.

H.39 DEAR 970.5226-3 -- Community Commitment. (DEC 2000) (Deviation)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include:

- (a) Recognizing the diverse interests of the region and its stakeholders (including The Shoshone-Bannock Tribes),
- (b) Engaging regional stakeholders in issues and concerns of mutual interest, and
- (c) Recognizing that giving back to the community is a worthwhile business practice.

Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

H.40 Business Unit

The work performed under this contract shall be conducted by a separate business unit (separate corporation, division, segment, joint venture, etc.) that shall be totally responsible for all contract activities and shall present one face to the Government.

H.41 Performance Guarantee

If the Contractor is an entity that has been solely created for the purpose of performing this contract, the Performance Guarantee contained in Section L, Appendix 6 must be signed and is incorporated into this contract in Section J, Attachment C. Where this requirement applies, the Performance Guarantee must be signed by all parent companies, members, partners, or other similar parent entities that have ownership or management

rights over the Contractor. Each entity that signs a Performance Guarantee assumes joint and several liability for the performance of the contract. In the event any of the signatories to the Performance Guarantee enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.42 Representations, Certifications and Other Statements of the Offeror

The Representations, Certifications, and Other Statements of the Offeror submitted with the Contractor's offer for this contract are, by reference, incorporated in and made a part of this contract.

H.43 Responsible Corporate Official

The Government may contact, as necessary, the single responsible official identified below (who is at a level above the Contractor). That official is accountable for the Contractor's performance and is the person the Government will look to on performance issues. Should the responsible official change during the contract, the Contractor shall promptly notify the Government of the change.

Name:	William J. Madia
Position:	Executive Vice President for Laboratory Operations
Company:	Battelle Memorial Institute
Address:	505 King Avenue, Columbus OH 43201
Telephone:	(614) 424-5200
Fax:	(614) 424-3279
Email Address:	madia@battelle.org

H.44 Conflicts of Interest Compliance Plan

The Contractor shall submit a Conflicts of Interest (COI) Compliance Plan to the Contracting Officer for approval within 60 days after the award date of this contract. The Plan shall address the Contractor's approach for adhering to the contract provision entitled "Organizational Conflicts of Interest" and describe its procedures for aggressively self-identifying and resolving both organizational and employee conflicts of interest. The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations meet the highest standards of ethical conduct, and how its assistance and advice are impartial and objective. The Plan shall specifically address:

- (a) How COI issues will be identified and resolved during contract performance.
- (b) How the Contractor will ensure its work force is aware of and complies with COI requirements.
- (c) How the Contractor will ensure that the activities of parent and affiliated companies are consistent with its Plan.

- (c) How the Contractor will protect confidential, proprietary, or sensitive information.

H.45 Definitions of Unusually Hazardous or Nuclear Risk for FAR Clause 52.250-1 Indemnification under Pub. L. No.85-804

- (a) The term “a risk defined in this contract as unusually hazardous or nuclear” as used in FAR Clause 52.250-1 (Contract Clause I.59) means the risk of legal liability to third parties (including legal costs as defined in paragraph jj. of Section 11 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2014jj.)), notwithstanding the fact that the claim or suit may not arise under section 170 of said Act) arising from actions or inactions in the course of the following performed by the Contractor under this contract:
 - (1) Assistance in the redesign of research and test reactors outside the United States under the Reduced Enrichment for Research and Test Reactors (RERTR) program (including but not limited to that performed pursuant to the contract between the University of Chicago and Russian Research and Development Institute of Power Engineering (RRDIPE), dated January 17, 1995, and any extension thereto), so that the reactors can use low rather than high-enriched uranium and thus reduce the potential for the loss or diversion of high-enriched uranium.
 - (2) Assistance in nuclear materials protection, control and accounting technical support (MPC&A) to the DOE with respect to nonproliferation activities involving nuclear material outside the United States, such as establishing safeguard systems to prevent diversion of nuclear material or preventing the unauthorized import or export of nuclear material, including but not limited to:
 - a. The Department of Energy MPC&A activities in Ukraine under the Agreement Between the Department of Defense of the United States of America and the Ukraine State Committee on Nuclear and Radiation Safety Concerning Development of State Systems of Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation from Ukraine, dated December 18, 1993, and any extension thereto;
 - b. The Department of Energy's MPC&A activities in Belarus under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Belarus Concerning Control, Accounting and Physical Protection of Nuclear Material to Promote the Prevention of Nuclear Weapons Proliferation, dated June 23, 1995, and any extension thereto;
 - c. The Department of Energy's MPC&A activities in Kazakhstan under the Agreement Between the Department of Defense of the United States of America and the Ministry of Defense of the Republic of Kazakhstan Concerning Control, Accounting and Physical Protection of Nuclear

- d. The Department of Energy's MPC&A activities in Russia under the Agreement Between the Department of Defense of the United States of America and the Ministry of the Russian Federation for Atomic Energy Concerning Control, Accounting and Physical Protection of Nuclear Material, dated September 2, 1993, and any extension thereto; and
 - e. The Department of Energy's MPC&A activities in the Baltic States of Latvia and Lithuania and in Uzbekistan under the Coordinated Technical Support Plans (CTSP), and any extension thereto for the states of the former Soviet Union as supported by the member states of the Atomic Energy Agency.
- (3) Assistance in the Department of Energy's activities under the Russian Research Reactor Fuel Return (RRRFR) Program to repatriate Russian-origin highly enriched uranium (HEU) nuclear materials from research reactors outside the United States, such as assistance with project planning and management, technical support, and contracting for the preparation, loading and transportation of HEU nuclear materials and spent nuclear fuel from countries outside the United States to the Russian Federation, and the processing, conditioning, and storage of HEU nuclear materials, spent nuclear fuel, and associated waste streams within the Russian Federation.
- (4) As requested or approved by the President of the United States, the Secretary of Energy, the Deputy Secretary of Energy, or the Under Secretary for Nuclear Security, non-proliferation, emergency response, antiterrorism and similar critical national security activities involving the use, detection, identification, assessment, control, containment, dismantlement, characterization, packaging, transportation, movement, storage, or disposal of nuclear, radiological, chemical, biological, or explosive materials, facilities and/or devices; provided that the activity relates to materials that are weapons usable or otherwise have the potential for mass destruction and further provided that the request or approval specifically makes the indemnity provided by this clause applicable to that particular activity.
- (b) The unusually hazardous or nuclear risks described above are indemnified only to the extent that they are not covered by the Price Anderson Act, section 170d. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210d.) or where the indemnification provided by the Price-Anderson Act is limited by the restriction on public liability imposed by section 170e. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. Section 2210e.) to an amount which is not sufficient to provide complete indemnification for the legal liability to which the contractor is exposed.

(c) For purposes of this Section H.45, the term “Contractor” means:

- a. Battelle Energy Alliance, LLC (“BEA”),**
- b. BEA’s member company: Battelle Memorial Institute,**
- c. BEA’s Teaming Subcontractors: BWX Technologies, Inc. and Washington Division of URS Corporation.**